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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 01 2009

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Mari Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a public university that seeks to employ the beneficiary as a assistant professor of forensic sciences. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel, a witness letter, and other exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the beneficiary qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the petition on April 16, 2007. [redacted], the petitioner's Interim Vice President for Academic Affairs, set forth the petitioner's waiver claim in a letter accompanying the initial filing of the petition:

> [The beneficiary] is responsible for the development of an accredited Forensic Science program which will complement the new Homeland Security degree program. [The beneficiary] will also teach [six named courses in forensic science and chemistry]. . . .

> [The petitioner] will be the first HBCU [historically black college/university] in the country and the first institution in the state of Georgia, public or private, to offer the Bachelor of Arts degree in Homeland Security and Emergency Management in fall 2007. [The beneficiary] is in charge of the development of the Forensic Science Program. . . .
>
> The collaboration between the Criminal Justice, Homeland Security and Forensic Science Programs is significant. Often times, individuals entering the field of forensic science have limited knowledge of how crime scenes are processed, or how crime events are reconstructed, resulting in ill prepared interface with the legal community or present evidence in a court of law. With these key programs in place, [the petitioner] is poised to address this issue by constructing a strong bridge between the laboratory, the crime scene and the legal system. . . .
>
> [The beneficiary] has initiated a research project for the **Synthesis of Methamphetamine Abuse Rehabilitation Treatment Agents**. [The beneficiary] is in the process of synthesizing medicinal agents which are expected to be selective for the dopamine (D3) receptor . . . in order to improve cognitive skills, reverse impairment, as well as, address the resultant psychosis associated with methamphetamine abuse. . . .
>
> [The beneficiary] submitted an initial white-paper application for the research cluster program to the UNCF [United Negro College Fund] Special Programs Office, via its NASA [National Aeronautics and Space Administration] Science and Technology Institute for Minority Institutions. Upon review of her initial research proposal NASA has now extended to [the beneficiary] an official invitation to submit a full proposal.
>
> The mission of the UNCFSP NSTI-MI program is to create a consortium of Minority Institutions (MIs) that will participate in cutting edge research in collaboration with NASA, other government agencies, private organizations, majority institutions, as well as, research and technical organizations through the establishment of Research and Development (R&D) partnerships. . . . This program is very important because it will allow the University to further strengthen our research infra-structure.

(Emphasis in original.) [redacted] added that the beneficiary is an advisor on various programs and projects intended to improve minority education in the sciences. Some of the items listed above appear **to have intrinsic merit but not necessarily national scope. For instance, the UNCFSP NSTI-MI** program, as a whole, benefits the United States, but the petitioner has not shown how the participation of one particular institution in that program is a national interest issue. Similarly, the petitioner's being the first university in Georgia to offer a Homeland Security degree appears to be of regional rather than national concern.

Four other witness letters accompanied the petition. [redacted] of Clemson (South Carolina) University stated:

> [The beneficiary] worked with me as a Postdoctoral Research Associate from June 2002 until early 2006. . . . [The beneficiary] and I are currently in the final stages of writing a review paper on "Recent Advances in the Development of Selective Ligands for the Cannabinoid CB_2 Receptor" for publication in the review journal Current Topics in Medicinal Chemistry.
>
> . . . I can certify that [the beneficiary] has the potential to be an outstanding scientist and educator in the fields of organic and medicinal chemistry. She combines this ability with experience working in the Government of Jamaica Forensic Laboratory and currently teaches forensic science. This is an unusual and in my experience unique interdisciplinary combination.

[redacted] deemed the beneficiary's present research at the petitioning university "very promising."

[redacted] of Kennesaw (Georgia) State University stated:

> I was introduced to [the beneficiary] in 2004, when she visited the Department of Chemistry and Biochemistry at Kennesaw State University . . . [and] gave a very informative seminar on the synthesis of medicinal compounds for the development of anti-cancer and anti-inflammatory drugs. . . . Since then, I have remained in contact with [the beneficiary] and am aware of her continued contributions to the scientific community.
>
> . . . During her research fellowship at Clemson University, she successfully synthesized compounds which have resulted in publications and the filing of patent applications. In her current position . . . , in a very short period of time, [the beneficiary] has initiated two (2) new undergraduate research projects, from which her research student has presented results at national meetings in 2006. [The beneficiary] is a very active participant and research advisor in the Minority Access to Graduate Education in Science, Technology, Engineering, and Mathematics (MAGEC-STEM) program and is very committed to mentoring undergraduate minority students in research.
>
> [The beneficiary's] research project, the synthesis of methamphetamine abuse rehabilitation treatment agents is of particular interest and definitely in the best interest of our nation. She has recently submitted a proposal to the National Institute[s] of Health (NIH) for support of this project. . . . She expects to produce medicinal agents with minimum side effects to alleviate the psychosis experienced by methamphetamine abusers, and therefore decreasing the possibility of relapse during therapy.

now Vice President of Research – Regenerative Cell Technologies at Cytori Therapeutics, San Diego, California, stated:

> I became familiar with [the beneficiary] while I was the Vice President of Biology at Novasite Pharmaceuticals, San Diego, CA. . . . I was responsible for development and functional validation of a novel system uniquely suited for discovering drug candidates targeting the highly preferred molecular targets referred to as G protein-coupled receptors (GPCR). It was in this capacity that I interacted with [the beneficiary] and directly witnessed and benefited from her talents as a synthetic chemist. . . .
>
> I worked with [the beneficiary] to discover small novel molecule drug candidate compounds that selectively interact with two of the novel cannabinoid (CB) receptor class of GPCR, CB1R and CB2R. . . .
>
> [The beneficiary] expertly and efficiently performed the necessary chemical syntheses that allowed us to pursue increasingly selective and effective drug candidates at each of the CB1 and CB2 receptors. . . .
>
> In just the first year of [her] faculty position she has engaged a student to work with her to develop protease enzyme inhibitors, which may result in improved medications to combat several diseases including pulmonary emphysema, rheumatoid arthritis, cystic fibrosis, adult respiratory distress syndrome, chronic bronchitis and pancreatitis.

[redacted] of Virginia Commonwealth University, Richmond, stated: "I currently have many ongoing collaborations with [the beneficiary] and have for many years." provided technical details regarding the beneficiary's various research projects, already discussed above. [redacted] stated that the beneficiary "distinguishes herself" through her "extensive experience in the area of Synthetic Organic Chemistry coupled with her training in Crime Scene Investigation and Forensic Science."

The initial witnesses tended to focus on the beneficiary's research in chemistry. While they described the beneficiary's various projects, they offered little objective information to establish the larger impact that the beneficiary has had in her research specialty.

On April 23, 2008, the director issued a request for evidence, instructing the petitioner to explain how the beneficiary's work will "impact the United States beyond Georgia." The director also asked why it is in the national interest for the beneficiary, rather than a qualified U.S. worker, to participate in the various projects and proposals described in the initial filing. The director requested citation documentation to establish the impact of the beneficiary's published research work.

In response, the petitioner submitted additional letters. [redacted], Dean of the petitioner's College of Science and Technology, stated:

> Since her application for the NIW [national interest waiver] in April, 2007, [the beneficiary] has been awarded a three (3) year $240,000 research grant from [NASA-UNCFSP]. . . . [The beneficiary] is the Principal Investigator (P.I.) for this research

> project titled "**Synthesis of CB2 Receptor Selective Immunomodulatory Ligands.**" . . . These investigations are part of her long term research goals which are focused on the synthesis of agents for the evaluation of the pathological and psychological function of cannabinoid (CB2) receptors in immune system disorders. Long-term space flight is suspected of exerting deleterious effects on the body's immune system leading to the development of autoimmune diseases in astronauts. . . .
>
> Her research will specifically address the future of immunomodulatory therapies involving agents lacking side effects . . . currently associated with standard immune disorder treatment therapies.

The research project described above did not begin until after the petition's filing date. The beneficiary of an immigrant visa petition must be eligible under the circumstances in effect at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). At the time of filing, the petitioner indicated only that the beneficiary had received "an official invitation to submit a full proposal" to NASA. We will take the project into consideration insofar as it demonstrates the beneficiary's continued involvement in research, but we cannot find that the beneficiary was already eligible for the waiver in April 2007 because, at that time, she was attempting to obtain NASA funding to allow her to begin a new research project. We must consider what the beneficiary had achieved as of the filing date, rather than what the beneficiary hoped to accomplish after that date.

[redacted], the petitioner's Dean of Graduate Studies, stated that the beneficiary "has exceeded our expectations . . . I anticipate she is about to make major contributions" in the area of methamphetamine abuse treatment. [redacted] claims that the beneficiary's "work is well recognized internationally and nationally." Evidence ought to be available to support such a claim; otherwise, no basis would exist to justify that claim.

Regarding citation of the beneficiary's published work, stated that the beneficiary's "scientific **citations** are approximately in the range of 20-25" (emphasis in original). The petitioner, however, identified and submitted copies of only two published articles that contain citations to the beneficiary's work. One of those two articles was co-authored by [redacted], **who self-cited an earlier paper he had written with the beneficiary.** Because the petitioner documented only one independent citation, the record contains no evidence to substantiate the petitioner's figure of "20-25" citations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The petitioner submitted copies of electronic mail messages that the beneficiary has received, as evidence of interest in the beneficiary's work outside of Georgia. The beneficiary received these messages in early 2008, well after the petition's April 2007 filing date. Several of these messages discussed ongoing or proposed collaborations with other researchers in Georgia. A researcher in California requested a copy of a recent article by the beneficiary, stating that "the publisher pricing is outside the scope of my departmental budget." It is clear from the context that the researcher had not

yet read the article in question. We note that the requested article was published in 2008, after the filing date.

The director denied the petition on August 21, 2008, stating that while the beneficiary appeared to have potential for important contributions, the record contains "little evidence of the beneficiary's influence on her field as of April 16, 2007." The director noted that the petitioner's submission "only established two . . . citations" of the beneficiary's work, and that the record contained no evidence to support the claim "that other citations existed."

On appeal, counsel asserts that "the average age for receipt of a Ph.D. in Chemistry is 29.6 years. [The beneficiary] received her Ph.D. in Organic Chemistry at the very young age of 26 and is a female in a *male dominated field of science. It can then be stated that* [the beneficiary] is included in a very small percentage of young female Ph.D. holders in Chemistry. She also has 4 more years of experience than the average Ph.D. recipient of the same age." Counsel did not explain why this is relevant. Eligibility for the national interest waiver is not weighted by age or sex. If the beneficiary's receipt of a doctorate at age 26 is indicative of special abilities or aptitude, then these should become manifest in the work she produces. Therefore, it is entirely appropriate to judge the petition based on the beneficiary's accomplishments, rather than her age at the time of those accomplishments.

Counsel states: "very recently in July, 2008, [the beneficiary] developed what can easily be classified as a 'Scientific Breakthrough'" permitting more rapid synthesis of drug compounds. Counsel discusses other 2008 accomplishments by the beneficiary.

The petitioner submits a letter from [redacted]n of the University of Rhode Island, who states: "I became familiar with [the beneficiary's] work after reading her 2006 publication on new CB2 receptor selective ligands in the prestigious *Journal of Bio-organic and Medicinal Chemistry*." Most of the letter, however, is devote to the beneficiary's most recent work, such as her "expedited microwave reaction procedure," which took place well after the filing date. We note that Dr. Seeram was a doctoral student at the University of the West Indies from 1992 to 1998, overlapping the beneficiary's own doctoral studies at the same university from 1996 to 2001.

Other materials submitted on appeal, such as electronic mail messages, indicate that the beneficiary's most recent work has been well received, and that researchers have high hopes for the beneficiary's planned projects.

The director had already advised the petitioner that the petition would be considered based on the beneficiary's accomplishments as of the April 2007 filing date. The AAO will not discuss the beneficiary's later achievements in detail, as they have no bearing on whether the beneficiary was already eligible as of the filing date. The AAO rejects the assertion that the beneficiary's latest accomplishments are relevant because they show that earlier witnesses were justified in predicting her future success.

Regarding the beneficiary's citation history, counsel stated that the submission of two citing articles "is not to be misinterpreted as stating that [the beneficiary] has only 2 citations"; rather, the two articles contained commentary on the beneficiary's work. Counsel asserted that the total number of citations of the beneficiary's work is "approximately **30 citations**" (counsel's emphasis). The petitioner does not submit any evidence on appeal, such as a printout from a citation database, to corroborate this figure or to show how the petitioner knows even the approximate number of citations of the beneficiary's work.

With regard to the beneficiary's citation history, counsel states "it is difficult to obtain accurate metrics on a particular researcher because the scope and coverage of databases is not exhaustive." This may be the case, but even if a citation database is incomplete, the petitioner has not shown that such a database will erroneously indicate that a widely-cited researcher has few or no citations. It would be unreasonable to require an "exhaustive" and up-to-the-minute accounting of the beneficiary's complete citation history (and the director did not request evidence of that standard). Nevertheless, if the petitioner claims that the beneficiary's work has been cited "approximately 30" times, the petitioner must establish the source of that figure. 8 C.F.R. § 103.2(b)(16)(ii) requires the director to render a decision based on the record of proceeding. Because the petitioner has chosen, for whatever reason, to include evidence of only two citations of the petitioner's work in the record of proceeding, the director could take only those two citations into consideration when rendering the decision.

Counsel also makes that point that "a researcher might be frequently cited because their research is contentious, not because it is high quality, useful research." It is true that this is one reason, out of many, that a given article may be widely cited, which is one reason why we consider evidence from various sources rather than focusing exclusively on citations. If anything, this possibility should be an incentive for the petitioner to submit copies of all the articles that cite the beneficiary's work, in order to rule out the possibility that unsubmitted citations are negative or critical of the beneficiary's work.

The petitioner has consistently presented the beneficiary as a talented and promising researcher, with ambitions to raise the petitioner's academic profile through research and by establishing new programs. The petitioner, however, has provided little evidence that the beneficiary's plans had translated into actual impact at the time of filing in April 2007. If it is the petitioner's contention that the beneficiary's achievements in late 2007 and 2008 establish her eligibility for the waiver, then the proper course of action would be to file a new petition, with ample supporting evidence, which would permit detailed consideration of the beneficiary's accomplishments after April 2007. The AAO takes no position, at this time, as to the likelihood that a new petition would be more successful than the last.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.